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BEFORE THE FEDERAL ELECTION COMMISSION

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3 In the Matter of)

4 **CELA**)
5 MUR 6149)

6 HILLARY CLINTON FOR PRESIDENT)

7 AND SHELLY MOSKWA,)

8 AS TREASURER)
9

CASE CLOSURE UNDER THE
ENFORCEMENT PRIORITY SYSTEM

10 GENERAL COUNSEL'S REPORT

11 Under the Enforcement Priority System, matters that are low-rated

12 are forwarded to

13 the Commission with a recommendation for dismissal. The Commission has determined that
14 pursuing low-rated matters, compared to other higher-rated matters on the Enforcement docket,
15 warrants the exercise of its prosecutorial discretion to dismiss these cases. The Office of General
16 Counsel scored MUR 6149 as a low-rated matter.

17 The complainants in this matter, Daniel H. Weiner and Elizabeth A. Fuerstman, state that on
18 September 10, 2007, they made a contribution of \$2,300 for then-Senator Clinton's 2008
19 presidential primary election campaign, and another \$2,300 contribution for Senator Clinton's
20 general election campaign. The complainants further state that, after Senator Clinton failed to
21 receive the Democratic nomination for president, they repeatedly requested that their \$2,300 general
22 election contribution be refunded, pursuant to 11 C.F.R. § 102.9(e)(3).¹ The complainants allege
23 that, despite numerous oral and written requests, the Clinton campaign failed to respond. Attached
24 to the complaint is credit card information indicating that complainants were billed a total of \$4,600
25 for their contributions, and what appears to be a log of telephone calls and written correspondence
26 requesting a refund.

¹ 11 C.F.R. § 102.9(e)(3) states "If a candidate is not a candidate in the general election, any contributions made for the general election shall be refunded to the contributors...." (with certain exceptions not relevant here).

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1 In response, Hillary Clinton for President and Shelly Moskwa, in her official capacity as
2 treasurer ("the Committee"), does not dispute the complainants' assertions concerning the
3 contribution refund, but the Committee states that the complainants had apparently contacted then-
4 Senator Clinton's official Senate offices and HILLPAC, a separate committee. Neither of these
5 entities, according to the Committee, forwarded the complainants' refund requests. Once it
6 received the complaint, the Committee maintains that it reviewed its records and determined it had
7 issued a refund check on August 28, 2008 to the complainants at their "address of record."² The
8 Committee also determined that the refund check had not been cashed. Accordingly, the
9 Committee issued the complainants another refund check for \$2,300 on February 3, 2009, a copy of
10 which is attached to its response.³

11 It appears that the Committee issued a second refund check promptly after being notified
12 that the first refund check had apparently not been delivered.⁴ Accordingly, in furtherance of the
13 Commission's priorities and resources, and relative to other matters pending on the Enforcement
14 docket, the Office of General Counsel believes that the Commission should exercise its
15 prosecutorial discretion and dismiss the matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

² In its response, the Committee states, and its 2008 September Monthly report confirms, that the address to which it sent the first refund check was identical to the address listed on the complaint. The Committee surmises that this check must have been lost in the mail or inadvertently discarded.

³ After receiving the response, we contacted the complainants, who confirmed that they had received the reissued contribution refund check.

⁴ In light of our recommendation to dismiss this matter, we are not making a recommendation concerning whether the initial refund attempt was timely under the Federal Election Campaign Act of 1971, as amended.

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RECOMMENDATIONS

The Office of General Counsel recommends that the Commission dismiss MUR 6149, close the file, and approve the appropriate letters.

Thomasenia P. Duncan
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12/15/09

Date

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